wrongfully admitted as such and should have been struck off from the record. We do not agree. In the first place, it was a clear admission of participation in the attempted robbery and consequently it was a statement having reference to the charge against him — which was a murder committed in the course of a robbery wherein there was evidence of common intention to use deadly weapons. In the second place, if the statement was not a confession, then it was not one rendered inadmissible under section 124 of the Criminal Procedure Code (S.S.) — counterpart of the Malayan Criminal Procedure Code section 113 — or any other provision of the Evidence Ordinance. Any self-incriminating statement made by an accused after an offence, in relation thereto, given to a third person, not a police officer, is clearly admissible in evidence and this is a statement of principle which has never been disputed.

On behalf of the first appellant, it was further argued that the second appellant's confessional statement should not have been used or considered as evidence, against the first appellant, of common intention. We rejected this contention: the question having been concluded by authority, being a decision of this court in *Herchun Singh & Ors.* v. *Public Prosecutor*[6] on the proper interpretation and application of section 30 of the Evidence Ordinance 1950 (now the Evidence Act No. 56) which reads: —

"30.(1) When more persons than one are being tried jointly for the same offence, and a confession made by one of those persons affecting himself and some other of those persons is proved, the court may take into consideration the confession as against the other person as well as against the person who makes the confession."

The statement of principle therein enunciated was that the learned trial judge was right in taking the confession of one accused into consideration against the other to lend assurance to the other evidence against them in believing the accused to be guilty.

In this case, the first appellant's involvement in the robbery was admitted by him in his own statement from the dock. On this point, corroboration by the second appellant's statement was superfluous. As to proof of common intention their joint involvement in a carefully planned robbery must lead irresistibly, from the fact of two of the trio being armed with lethal weapons, to the inference of the common intention to use those weapons in case of need. In such a planned operation, it is impossible to imagine that any of the trio could have set out on their enterprise without being aware of how each was to be provided with the necessary weapon for use to intimidate or overpower their intended victim and secure their escape if obstructed by others trying to capture them.

We have scrutinised the entire record with the greatest care and satisfied ourselves that the unanimous verdict of the jury was the right and only possible one. We accordingly dismissed this appeal by both appellants.

Appeal dismissed.

GOVERNMENT OF MALAYSIA v. ROSALIND OH LEE PEK INN

[A.C.J. (Suffian F.J.) February 24, 1973]

[Kuala Lumpur — Selangor Civil Appeal No. 54 of 1971]

Administrative Law — Police officer — Contract of employment between Government and police officer — Emoluments — Housing allowance — Whether married woman police officer entitled to housing allowance — Police Ordinance, 1952, ss. 80, 81 & 82.

The respondent, a woman Inspector of Police, was while unmarried given by the government rent-free quarters or an allowance in lieu. After she married on August 20, 1962 and went to live with her husband, however, she received neither the rent free quarters nor an allowance in lieu. She applied for a rent allowance and eventually the government agreed to give her a rent allowance but with effect from March 1, 1965. She brought an action against the government for the housing allowance from the date of her marriage to February 28, 1965 and judgment was given in her favour in the Sessions Court. The Government of Malaysia appealed.

Held: (1) the contract between a public servant and the Government is of a special kind, as once appointed the Government servant acquires a status and his rights and obligations are no longer determined by consent of both parties but by statute or statutory or administrative rules made by the Government;

(2) there was nothing in the circulars and regulations in this case that entitled the respondent to a housing allowance and therefore her claim should have been dismissed.

Cases referred to:-

(1) *Kodeeswaran* v. *Attorney General of Ceylon* [1970] 2 W.L.R. 456.

(2) *Reilly* v. *The King* [1934] A.C. 176, 180.

(3) *Roshan Lal* v. *Union of India* A.I.A. [1967] S.C. 1889.

(4) *High Commissioner for India* v. *Lall* L.R. [1948] I.A. 225.

The following authorities were also cited in argument: *Terrel's* case [1953] 2 All E.R. 490; *Ridge* v. *Baldwin* [1963] 2 All E.R. 66, 71E; *Howell* [1951] A.C. 837, 844; A.I.R. 1928 P.C. 98; *Seksaria* v. *Gondal* 77 I.A. 156, 163, 173, 175, 177: *LPTB* v.*Upton* [1949] A.C. 155, 167, 168; *Tan Chye Choo* [1970] 1 M.L.J. 1, 4; *Sundaram* [1972] 1 M.L.J. 83; *Majumdar* [1969] 1 M.L.J. 132; *Gnanasundram* [1966] 1 M.L.J. 157, 159; [1958] 2 All E.R. 194, 196 on word "will"; *Garey* 30 C.L.R. 132; *Gould* v. *Stuart* [1896] A.C. 575; *Sutton* v. *A. G.* 39 T.L.R. 294, H.L.; *Dunn* v. *Queen* [1896] ' Q.B. 116; *Worthington* v. *Robinson* [1896] L.T. 447; *Hales* v. *R.* [1918] 34 T.L.R. 589; *Kynaston* v. *The A. G.* [1933] T.L.R. 300; *Haji Ariffin* v. *Government of Pahang* [1969] 1 M.L.J. 6; *Lucas* v. *Lucas* [1943] 2 All E.R. 110; *H. C. for India* v. *Lall* A.I.R. [1948] P.C. 121; *Shenton* v. *Smith* [1895] A.C. 229; *S. of M.P.* v. *Mandawa* [1954] S.C. 493; *Nixon* v. *A. G.* [1931] A.C. 184; *Tan Chai Choo* [1970] 1 M.L.J. 1; *Minister of Agriculture and Fisheries* v. *Matthews* [1950] 1 K.B. 148; *Swallow & Pearson* v. *Middlesex O. C.* [1953] 1 W.L.R. 422; *Rhyl Urban District Council* v. *Rhyl Amusements Ltd.* headnote; *The Mayor of Borough of Sunderland* v. *Priestman*, headnote; *Maritime etc. Ltd.* v. *General Dairies Ltd.*, P.C. headnote; *Simond* [1951] A.C. 837, 845; *A. G. Ceylon* v. *A. D. Silva* [1953] A.C. 461; *Great etc.* v. *Charlebois* [1899] A.C. 114; *Ayr Harbour Trustees* v. *Oswald* [1882-3] 8 App. Cas. 623; *Munusamy* [1967] 1 M.L.J. 199; *Robertson* v. *Minister of Pensions* [1949] 1 K.B. 227; *Wells* [1967] 2 All E.R. 1041, 1044; *A. G. for Trinidad* v. *Bourne* [1895] A.C. 83, 87, 88.

CIVIL APPEAL.

Abdul Razak b'n Datuk Abu Samah (Senior Federal Counsel) for the appellant.

V. K. Palasuntheram (*Ernest V. Devadason* with him) for the respondent.

Suffian F.J.: The practice in this country was for government to supply their officers subsidised quarters at a nominal rent or in certain circumstances an allowance called a housing or rent allowance in lieu. Inspectors of Police were however supplied with rent-free quarters. The plaintiff, a woman Inspector of Police (respondent here), was while unmarried given by government either rent-free quarters or an allowance in lieu, but after she married on 20th August, 1962, and went to live with her husband, she received neither rent-free quarters nor an allowance in lieu, and when finally government relented they decided to restore her allowance not from the date of her marriage but only with effect from 1st March, 1965. She successfully sued the defendant the Malaysian Government (appellant before me) in the Sessions Court for her allowance for the period beginning with the date of her marriage and ending with 28th February, 1965.

The government have appealed to this court.

The issue in this appeal is whether the plaintiff Inspector is entitled during that period to rent-free quarters or an allowance in lieu.

The facts briefly are as follows. The plaintiff applied to become a Police Inspector. She received a letter dated 30th July, 1957, offering her employment as a woman Inspector subject to the conditions set out in that letter. One condition states —

"That you are at all times subject to Government General Orders, circulars and other administrative instructions as may from time to time be issued relating to the work, conduct and conditions of service of officers in the public service."

The plaintiff accepted the offer and the conditions and reported for duty on 5th August, 1957. She was confirmed in 1960.

It is now convenient to mention the regulations, circulars and standing orders governing the grant of housing or rent allowances to women Inspectors of Police.

First there is chapter E of General Orders issued with effect from 1st August, 1957. It deals with accommodation for all members of the public service, not only with members of the Police Force. That chapter (paragraph 4) makes clear that officers are only eligible for (not entitled to) quarters and says nothing about housing allowances in lieu.

Next, there are sections 6(1), 10(1) and 23(2) of the Police Ordinance No. 14 of 1952.

Section 6(1) provides:

"The Commissioner [of Police] shall, subject to the provisions ... of any regulations made [under the Police Ordinance] and to the orders and directions of the High Commissioner, have the command, superintendence, administration and direction of the Force... and be responsible for the control of all expenditure in connection therewith."

Section 10(1) provides:

"A superior police officer [which the plaintiff is]... shall engage to serve in the Force... on such conditions as may be prescribed by Police Regulations."

Section 23(2) provides:

"Women police officers.. shall enjoy such privileges... as may be prescribed by Police Regulations..."

As we shall see, police regulations are made under section 81 of the Police Ordinance.

It will be noticed that the plaintiff joined the service a few days before independence which came on 31st August, 1957. Immediately before independence sections 80, 81 and 82 of the Police Ordinance, 1952, provided as follows:

"80. The High Commissioner in Council may make Rules not inconsistent with the provisions of this Ordinance, relating to all or any of the following matters —

x x x x

(b) the pay and allowances of members of the Force...

81. The Chief Secretary may make Police Regulations, not inconsistent with the provisions of this Ordinance or any Rule made thereunder relating to all or any of the following matters —

(a) the description and issue of... uniforms and necessaries to be supplied to members of the Force;

x x x x

(g) all matters which, under the provisions of this Ordinance, may be provided for or prescribed by Police Regulations; ...

82. The Commissioner [of Police] may issue administrative orders, to be called 'standing orders', not inconsistent with the provisions of this Ordinance of Rules or Police Regulations, for the general control, direction and information of the Force."

On Merdeka Day when the new Federal Constitution came into force the Police Ordinance became existing law as defined by Article 160(2) of the Constitution; it continued in force after independence until modified by the Yang Dipertuan Agung or amended or repealed by Parliament. In exercise of his power under Clause (4) of Article 162 the Yang Dipertuan Agung made the Federal Constitution (Modification of Laws) Order, 1957, published as L.N. (N.S.) 1 of 31st August, 1957. By section 3 of that order it was provided that with immediate effect references in any existing law such as the Police Ordinance to the High Commissioner in Council shall be construed as references to the Yang Dipertuan Agung, and references to the Chief Secretary shall be construed as references to the Minister responsible for Police affairs who was identified by L.N. (N.S.) 30 as the Minister of Defence.

On 24th August, 1959, again in exercise of his power under clause (4) of Article 162 of the Constitution the Yang Dipertuan Agung made the Federal Constitution (Modification of Laws) (Police Ordinance) Order, 1959, published as L.N. 294/1959. By this order His Majesty specifically modified the Police Ordinance. The order expressly provided that for the words "Chief Secretary" in section 81 of the Police Ordinance, there were substituted the words "Yang Dipertuan Agung". Thus the power to make regulations under section 81 was transferred from the Minister to the Yang Dipertuan Agung himself.

Exactly five days later Regulations were made, namely, the Police (Scheme of Service for Inspectors) Regulations, 1969, under section 81 of the Police Ordinance, and published as L.N. 331/59. These Regulations however were made not by the Yang Dipertuan Agung, as required by L.N. 294/59, but by the Minister of Defence. Regulation 11 of these Regulations

provides as follows:

"Inspectors will be provided with ... rent-free quarters furnished in accordance with the scale laid down in General Orders."

It is on this regulation that the plaintiff founds her claim. But it is to be noted that the regulation nowhere mentions housing allowance in lieu of rent-free quarters.

On 28th March, 1961, the Principal Establishment Officer on behalf of the government issued Service Circular No. 4 of 1961 which for the first time as far as this case is concerned mentioned housing allowances. The first paragraph provided that with effect from 1st April, 1961, officers not living in government quarters would be eligible for housing allowances at specified rates. This eligibility, it was stated, was subject to the following paragraphs in the circular of which paragraph 3 is relevant.

Paragraph 3 dealt exclusively with women. It read:

"Housing allowance is payable to women officers and employees at the discretion of the Principal Establishment Officer... An application from a woman officer for housing allowance will not normally be considered in any of the following cases:

(i) [if] she is living with her husband ...;

(ii) [if] she is married, unless she can demonstrate that she is not receiving any financial assistance from her husband or other male relative;

(iii) [if] she is receiving any financial assistance from her father or other male relative;

(iv) ....."

Paragraph 10 of the circular said that its contents had been agreed both in Whitley Council and in Police Council.

Thus it will be seen that if this circular applied to the plaintiff she would receive a housing allowance in lieu of quarters only if the Principal Establishment Officer exercised his discretion to grant her one and that she was not entitled to it, as being a married woman she was living with her husband.

On 9th November, 1962, the Commissioner of Police issued under section 82 of the Police Ordinance the exhibit referred to throughout as C.S.O. 9(2) or Commissioner's Standing Order 9(2). It is part of several standing orders headed "Employment of Women Police Inspectors". C.S.O. 9(2) as originally issued read as follows:

"A married woman inspector is entitled to married quarters. If no Government accommodation is available, she fay be permitted to rent private accommodation and claim housing allowance at such rates as may be approved from time to time."

Twenty-one days later the full-stop after the words "from time to time" was replaced by a semi-colon and the following words were added "subject to the provisions of Service Circular 4/1961".

On 14th May, 1965, the whole of C.S.O. 9(2) was rewritten as follows:

"A married woman inspector is entitled to married quarters. If no Government accommodation is available, she may be mitted to rent private accommodation and claim rent allowance."

Thus it will be seen that under C.S.O. 9(2) as originally drafted the plaintiff might be granted a housing allowance in lieu of quarters. It seems to me that the position remained unchanged even twenty-one days later when C.S.O. 9(2) was amended to make it subject to Service Circular No. 4 of 1961.

It is now necessary to return to the facts of this case.

On 20th August, 1962 (as already stated), the plaintiff married. Prior to her marriage when she was not occupying rent-free quarters, she drew a rent allowance appropriate for a single officer of the Inspectorate, namely, a minimum of $75 per month. On 6th November, 1962, she wrote to government claiming a rent allowance as she was living in a rented flat with her husband. She was paying rent $200 a month and she claimed a refund of the full rent from government. Mr. S. Nathan, on behalf of the Commissioner of Police, wrote a letter dated 26th November to the Principal Establishment Officer supporting her claim. Mr. Nathan said in that letter that according to Service Circular No. 4/61 a married woman in the circumstances of the plaintiff was not eligible for a housing allowance (as she was living with her husband). but the plaintiff's condition of service which was laid down in L.N. 331/59 entitled her to rent-free quarters and that in the opinion of Police Headquarters she was entitled to the rent allowance claimed.

To cut a long story short, the government finally agreed to pay the plaintiff a rent allowance not however with effect from the date of her marriage (20th August, 1962) but with effect from 1st March, 1965. It is in respect of the period 20th August, 1962, until 28th February, 1965, that the plaintiff successfully in the Sessions Court sued for arrears of rent allowance, the agreed amount being $5,000.

I shall now state my conclusion on this appeal.

Though the plaintiff holds office at the pleasure of the Yang Dipertuan Agung (Article 132(2A) of the Federal Constitution) I hold contrary to the arguments on behalf of the government that the relation between her and the Crown are contractual. As was stated by Lord Diplock (page 460) in *Kodeeswaran* v. *Attorney-General of Ceylon*: [1]

"It is now well established in British constitutional theory... that any appointment as a Crown servant, however subordinate, is terminable at will unless it is expressly provided by legislation; but as pointed out by Lord Atkin in *Reilly* v. *The King*,[2] 'a power to determine a contract at will is not inconsistent with existence of a contract until so determined.'"

I should add that the contract between a public servant such as the plaintiff and the government is of a very special kind, for as was stated by Ramaswami J. at page 1894 when delivering the judgment of the Indian Supreme Court in *Roshan Lal* v. *Union of India*: [3]

"It is true that the origin of Government service is contractual. There is an offer and acceptance in every case. But once appointed to his post or office the Government servant acquires a status and his rights and obligations are no longer determined by consent of both parties, but by statute or statutory rules which may be framed and altered unilaterally by Government... The hall-mark of status is the attachment to a legal relationship of rights and duties im-

posed by the public law and not by mere agreement of the parties."

Next I hold also on the authority of *Kodeeswaran* that arrears of salary of a civil servant of the Crown, as distinguished from a member of the armed forces, constituted a debt recoverable from the Crown. As stated by Lord Diplock at page 464-5:

"A right to terminate a contract of service at will coupled with a right to enter into a fresh contract of service may in effect enable the Crown to change the terms of employment in future... But this does not affect any right to salary already earned under the terms of his existing contract before its termination."

Their Lordships of the Privy Council held that that part of their judgment to the contrary in *High Commissioner for India* v. *Lall*[4] must be regarded as having been given *per incuriam.*

There are in my judgment two kinds of salaries payable to members of the public service — first, statutory such as that payable to the Auditor-General under authority of Act of Parliament (article 105(4) of the Federal Constitution) or, secondly, non-statutory. The salaries of the bulk of members of the public service are non-statutory. For example, the plaintiff's salary was originally contained in the first paragraph of the letter offering her employment. It was not contained in any rules made under section 80 or any regulations made under section 81 of the Police Ordinance. I have no doubt that though it was non-statutory the plaintiff had a right to it and that if the government failed to pay it while she was still in service on the authority of *Kodeeswaran* she could have successfully sued for it.

I now come to the main question whether or not she is entitled to rent-free quarters or a rent allowance in lieu, the answer to which must depend on the construction of the relevant circulars and regulations.

It is significant that when it comes to perquisites other than salaries government are careful to state that a public servant is only eligible for such and such a perquisite, eschewing the use of the word "entitled". Where that is so, I am of the opinion that the public servant is not entitled to but only eligible for that perquisite and that should government fail to supply it the court cannot compel them to do so against their will.

Chapter E of General Orders dealing with accommodation, for instance, carefully avoids the use of the word "entitled" and clearly means that members of the public service are not entitled to subsidised quarters but are only eligible for them. This means in my view that should government provide subsidised quarters well and good, but should they fail to do so government cannot be compelled by law to do so or pay damages, though of course it is well known that government are concerned to have an efficient and contented service and do everything they can to alleviate the hardship of employees who do not have quarters.

But when we come to police inspectors, section 23 (2) of the Police Ordinance makes quite clear that women police officers *shall* enjoy such privileges as are prescribed by police regulations made under section 81, and it is said on behalf of the plaintiff that regulation 11 of L.N. 331/59 which provides that —

"Inspectors... *will be provided* with... rent-free quarters furnished in accordance with the scale laid down in General Orders."

confers on the plaintiff (because of the words in italics) not merely an eligibility for rent-free quarters but more, an entitlement to such quarters, that this not only conferred on her a right to but at the same time imposed on government a statutory duty to supply her with such quarters, and that failure on the part of government to do so makes them liable in damages. It is further said on the plaintiff's behalf that regulation 11 is subsidiary legislation that has the force of law which can only be amended by law and not by administrative act, that Service Circular No. 4 of 1961 purporting to deny women police inspectors who are married and living with their husband housing allowances, and signed by the Principal Establishment Officer, is only an administrative instruction, that that administrative instruction cannot diminish the right conferred on the plaintiff by law, and that equally C.S.O. 9(2) before its final amendment on 14th May, 1965, had only administrative effect and could not diminish the right conferred on the plaintiff by regulation 11.

On behalf of the government it is argued before me that only Rules made under section 80 may provide for the pay and allowances of such as the plaintiff, namely by the High Commissioner in Council or after independence by the Yang Dipertuan Agung, and that no regulations made under section 81 may do so, it being the scheme of the Police Ordinance to enable only the highest authority in the land to prescribe the pay and allowances of the Police Force, and that in any event the purported exercise by the Minister of the power to make regulations under section 81 after such power had been transferred by L.N. 294/1959 from him to His Majesty, is null and void, and that therefore inspectors such as the plaintiff do not have a right under L.N. 331/59 to rent-free quarters, and that the failure of government to provide the plaintiff rent-free quarters is not a breach of duty for which the government are liable in damages.

I hold that though the Minister had after L.N. 294/59 no power to make police regulations under section 81 and that therefore regulation 11 has no legislative effect, yet it has *administrative* effect as conferring on police inspectors such as the plaintiff a right to rent-free quarters. I say so because it is not the intention of the Police Ordinance to confer on the Yang Dipertuan Agung alone the right to prescribe either under section 80 or 81 the pay and allowances of the Force and because in law it is open to anybody in government, a Minister or even a civil servant acting with the general or special authority of government, to prescribe pay and allowances. Thus the drastic salary revisions implemented as a result of the recommendations of the Royal Commission on Salaries have been effected simply by Service Circular No. 7 of 1970 signed by the Director-General of the Public Services Department; and I do not think that it is open to anybody to argue that a police inspector who has opted for the new salary, is not entitled to the new salaries contained in that circular. On the contrary I would hold him entitled to it, though not embodied in rules

made under section 80 or regulations under section 81 of the Police Ordinance. The solemnity of gazetting the Minister's order as L.N. 331/59 though without legislative effect must in my view lead to the reasonable conclusion that the Minister's order was intended to have and does have some effect albeit administrative.

But in my judgment the plaintiff's claim does not fall to be governed by regulation 11 alone, because by the time of her marriage (on 20th August, 1962) regulation 11 which had only administrative effect had been modified (as it could be) by the administrative decision embodied in Service Circular No. 4 of 1961. So the plaintiff's claim falls to be governed by regulation 11 as modified by Service Circular No. 4 of 1961 and it is clear from paragraph 3 of that circular that with effect from her marriage she was not entitled to a housing allowance, as being a married woman officer she was living with her husband. That was clearly so until 9th November, 1962, when C.S.O. 9(2) was made. As already stated, in its original form C.S.O. 9(2) made no reference to Service Circular No. 4 of 1961 and it would therefore appear that under C.S.O. 9(2) the plaintiff could have been paid a housing allowance in lieu of rent-free quarters even though she was living with her husband, but even so she had no right to such housing allowance because C.S.O. 9(2) was careful to say that if no government accommodation was available a woman police inspector "*may*" be permitted to rent private accommodation and claim housing allowance, *not* must be permitted to rent private accommodation and be paid housing allowance. Any doubt about this was removed 21 days later when the C.S.O. was amended to make it expressly subject to Service Circular No. 4 of 1961. After the amendment it became quite clear that she would not be entitled to a housing allowance in lieu of rent-free quarters, if she was living with her husband. This disentitlement was not removed even when C.S.O. 9(2) was redrafted on 14th May, 1965, by removing from it all reference to Service Circular No. 4 of 1961.

Despite my sympathies for the plaintiff I regret therefore to have to conclude that there was nothing in the circulars and regulations that entitled her to a housing allowance during the period beginning with her marriage (on 20th August, 1962) and ending with 28th February, 1965.

I would therefore allow this appeal with costs here and below.

Appeal allowed.

Solicitors: *Ernest V. Devadason.*